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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/658,638	09/09/2003	William D. Lakin	02962-00062	4716
21918	7590	09/25/2006	EXAMINER	
DOWNS RACHLIN MARTIN PLLC			SAADAT, CAMERON	
199 MAIN STREET			ART UNIT	
P O BOX 190			PAPER NUMBER	
BURLINGTON, VT 05402-0190			3715	

DATE MAILED: 09/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/658,638

Applicant(s)

LAKIN ET AL.

Examiner

Cameron Saadat

Art Unit

3715

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 28 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-11, 13, 15-28 and 30-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11, 13, 15-28, and 30-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

In response to after-final amendment filed 8/28/2006, claims 1-11, 13, 15-28, and 30-38 are pending in this application. Finality of this application is withdrawn in view of the new ground of rejection under 35 U.S.C. 101 set forth below.

#### *Claim Rejections - 35 USC §101*

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requires of this title.

**Claims 7-12 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.**

Claims 1-11, 13, 15-28, and 30-38 are rejected under 35 U.S.C. 101. The language of the claims is merely directed to an abstract idea that is not tied to a physical transformation which would result in a practical application producing a concrete, useful, and tangible result to form the basis of statutory subject matter under 35 U.S.C. 101. As claimed, the end result provided is a plurality of solved differential equations. The claimed solved differential equations in the overall process or machine does not clearly integrate with the other elements of the apparatus or process in order to produce a concrete, useful, and tangible result to a user. Applicant should consider amending the claims to include: an output device, such as display device 42 described in the specification, or any physical transformation of the differential equations that provides a concrete, tangible, and useful end result to a user for simulating the pressure dynamics of the intracranial system.

A process that consists solely of the manipulation of an abstract idea is not concrete or tangible. *See In re Warmerdam, 33 F.3d 1354, 1360, 31 USPQ2d 1754, 1759 (Fed Cir. 1994).*

#### *Allowable Subject Matter*

The indicated allowability of claims 12 and 29 (now cancelled and integrated into independent claims 1, 18, 34-38) is withdrawn in view of the new Rejection under 35 U.S.C. 101. Claims 1-11, 13,

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15-28, and 30-38 would be allowable if rewritten or amended to overcome the rejection under 35

U.S.C.101, set forth in this Office action.

*Response to Arguments*


Applicant's arguments with respect to claim 1-11, 13, 15-28, and 30-38 have been considered but are moot in view of the new ground(s) of rejection.


*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cameron Saadat whose telephone number is (571) 272-4443. The examiner can normally be reached on M-F 9:00 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached on (571)272-6788. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Cameron Saadat  
September 7, 2006

 9/12/06  
ROBERT R. OLSZEWSKI  
JULISORY PATENT EXAMINER  
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